

Invitation to tender no. ACER/OP/ADMIN/21/2012

Market monitoring system for the Agency's REMIT information system (ARIS)

Answers to questions from 5 to 9

Question no. 5:

Annex 1B: We are unable to give out any information on our shareholders as these are private equity houses.

Answer no. 5:

Evidence of financial and economic capacity must be provided by means of one or more of the following documents: (a) statements from the bank indicating good financial viability or evidence of professional risk insurance covers; (b) balance sheets or extracts from balance sheets for at least the last two years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established; (c) statement of overall turnover concerning the services covered by the contract during the last three financial years. Tenderers who do not provide the documents required in these Tender specifications with regard to the selection criteria may be excluded. The Agency will decide whether the substantiating documents provided constitute compliance with the selection criteria.

In the case of a private equity house as a tenderer, the candidate should be able to provide such information for the equity house submitting the offer and not of each single shareholder. If some data are not applicable this must be duly justified, explaining why this is not applicable in submitting the offer.

Question no. 6:

Annex 1B: We will not be able to share any of our insurance policy before a contract is signed between the parties.

Answer no. 6:

The requested documents have to be provided when submitting the tender. Tenderers who do not provide the documents required in these Tender specifications with regard to the selection criteria may be excluded. The Agency will decide whether the substantiating documents provided constitute compliance with the selection criteria.

Question no. 7:

Annex 1(E): We will not be able to share any of the company's bank details before a contract is signed between the parties.

Answer no. 7:

The tenderer has to provide duly completed and signed financial identification form (Annex I.E to the tender specifications). Tenderers who do not provide the documents required in these Tender specifications with regard to the selection criteria may be excluded. The Agency will decide whether the substantiating documents provided constitute compliance with the selection criteria.

Question no. 8:

Annex 1(I): We are being asked to guarantee a level of performance and commitment in order to be considered as a tenderer in the Framework Contract (the Tender Specifications) The Tender Specifications document contains the type of representations which would normally be set out in the negotiated license agreement, and we therefore find we cannot agree to the majority of these as part of the tender process:

- (Quality, security and technological standards): This section contains representations that would normally be given in our license agreement (although we wouldn't typically give these in the form that they are set out here). We would need to have the opportunity to respond to each representation separately.
- We cannot guarantee that our product is capable of replacing a previously approved product.
- We can probably commit to producing an activity report, but would need more information.
- We cannot guarantee that the system will meet the requirements at this early stage in the tender process.
- We would prefer to use our own license agreement, rather than the framework agreement which has been provided. Would ACER be open to this?

Answer no. 8:

Submission of a tender implies acceptance of all the terms and conditions set out in this invitation to tender, in the specification and in the draft contract and, where appropriate, waiver of the tenderer's own general or specific terms and conditions. It is binding on the tenderer to whom the contract is awarded for the duration of the contract.

In case the potential tenderers need any additional information, these requests should be addressed to the functional e-mail box, as stated in the invitation to tender, not less than nine (9) working days before the closing date for submission of tenders

Question no. 9:

Annex III: Framework Agreement – we will not be able to accept this in its current form, and we need the ability to negotiate and discuss around each point in the contract. EU law is not a valid governing law and SunGard are unlikely to be able to accept Slovenian law.

Answer no. 9:

This is an open tender procedure and not a negotiated one. Submission of a tender implies acceptance of all the terms and conditions set out in this invitation to tender, in the specification and in the draft contract and, where appropriate, waiver of the tenderer's own general or specific terms and conditions. It is binding on the tenderer to whom the contract is awarded for the duration of the contract.